CHICAGO LOS ANGELES NEW YORK WASHINGTON, DC

JENNER&BLOCK LLP

September 10, 2014

Julie A. Shepard
Tel 213 239-2207
Fax 213 239-2217
jshepard@jenner.com

Via Electronic Mail

The Honorable Alison J. Nathan
United States District Judge
United States District Court for
the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 906
New York, NY 10007

Re: *ABC, et al. v. Aereo, Inc.*, Nos. 12-Civ-1540, 1543-AJN (S.D.N.Y.) (Consolidated)

Dear Judge Nathan:

Pursuant to Rules 1B and 4A of the Court's Individual Practices in Civil Cases and the Court's Order dated September 8, 2014 [Dkt. No. 332], Plaintiffs submit this joint letter on behalf of Plaintiffs and Defendant Aereo, Inc. (collectively, "the Parties") requesting the Court to file under seal the documents listed below in support of Plaintiffs' Reply Memorandum on Remand in Support of a Preliminary Injunction:

1. Portions of the Reply Memorandum on Remand in Support of a Preliminary Injunction ("Reply Brief");
2. Portions of the Declaration of Julie Shepard and portions of Exhibits A-I and K-M thereto; and
3. Exhibit A to the Declaration of Bruce Keller.[1]

As required by Your Honor's Individual Practices in Civil Cases, attached hereto are (1) a full set of these documents in highlighted form, and (2) one partial, loose leaf set comprised solely of the pages on which the Parties seek redactions. The Parties have met and conferred regarding these jointly proposed redactions.

Plaintiffs' Confidential Information:

Plaintiffs request, and Aereo does not oppose, that the Court authorize a few, narrowly-tailored redactions in connection with this filing. Pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2nd Cir. 2006), judicial documents may be protected from public

[1] After further meet and confer efforts, the Parties have determined that Plaintiffs' Evidentiary Objections to Aereo's Submission of the Chipty Report in Opposition to Plaintiffs' Motion for Preliminary Injunction (the "Evidentiary Objections") may be filed publicly. Accordingly, Plaintiffs will publicly file the Evidentiary Objections on September 10, 2014.

disclosure when taking into account, among other things, "the privacy interests of those resisting disclosure." In light of *Lugosch*, and pursuant to Sections 1.B and 4.A of Your Honor's Individual Practices in Civil Cases, Plaintiffs request that the portions of documents and testimony referencing agreements and negotiations with third parties be filed under seal because these documents contain confidential, commercially sensitive information that is non-public and integral to Plaintiffs' businesses and considered confidential by third parties. Disclosure of the terms of such agreements with third parties and the terms at issue in Plaintiffs' negotiations would potentially harm Plaintiffs' position in future negotiations and Plaintiffs' relationships with their business partners. *See In re Zyprexa Injunction*, 474 F. Supp. 2d 385, 421-22; (E.D.N.Y. 2007) ("confidential commercial information . . . revelation [of which] has the potential to impinge on the company's privacy and property rights and inflict commercial harm."); *accord Standard Inv.*, 2008 WL 199537, at *8 (quoting *Nixon*, 425 U.S. 598). In sum, Plaintiffs' redactions "are narrowly tailored, limited in scope, and justified to protect [the Plaintiffs'] confidential and proprietary business information." *See* Dkt. 215 at 5 (citing *Lugosch*, 435 F.3d at 120; *Zyprexa Litig.*, 474 F. Supp. 2d at 421.

Defendant's Confidential Information:

Aereo requests, and Plaintiffs do not oppose, that the Court authorize a few, narrowly-tailored redactions in connection with this filing. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006). The information Aereo wishes to redact constitutes highly confidential information that is so competitively sensitive it is entitled to extraordinary protection. *See Standard Inv. Chartered, Inc. v. National Ass'n of Securities Dealers, Inc.*, No. 07-Civ-2014, 2008 WL 199537, at *8 (S.D.N.Y. Jan. 22, 2008) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). In particular, Aereo wishes to redact certain information regarding the highly confidential methods by which the Aereo technology operates, including the methods by which the Aereo technology limits playback of over-the-air broadcasts to members within the geographic area served by over-the-air signals. Aereo further wishes to redact certain information regarding Aereo's proprietary business strategies and discussions, which constitute Aereo's "confidential commercial information . . . revelation [of which] has the potential to impinge on the company's privacy and property rights and inflict commercial harm." *See In re Zyprexa Injunction*, 474 F. Supp. 2d 385, 421-22; (E.D.N.Y. 2007); *accord Standard Inv.*, 2008 WL 199537, at *8 (quoting *Nixon*, 425 U.S. 598).

Respectfully submitted,

/s/ *Julie A. Shepard*

Julie A. Shepard
Jenner & Block LLP
Counsel for the WNET Plaintiffs

cc: All Counsel of Record